

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :

FIDELITY INFORMATION SERVICES, : Docket #09cv7589
: 1:09-cv-07589
Plaintiffs, :

- against - :

DEBTDOMAIN GLMS PTE, LTD., :
et al., : New York, New York
: July 28, 2010
Defendants.
-----:

PROCEEDINGS BEFORE
MAGISTRATE JUDGE KEVIN N. FOX,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For Plaintiffs: REAVIS PARENT LEHRER LLP
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2 emails from other unidentified employees, the request is
3 denied.

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5 Let me turn now to there was a request for an
6 order to produce Ariel Elchaim and a 30(b)(6) witness for
7 depositions late July, and to award defendants costs and
8 fees in connection with depositions, do the depositions
exceed ten?

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MR. BALBER: They do not, Your Honor.

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11 MR. MOORE: Your Honor, if you just include Ariel
12 Elchaim, they do not. I will say that we did offer Ariel
13 Elchaim during the discovery period as a 30(b)(6) witness,
14 we had come to what we thought was an agreed upon schedule,
15 including a date for Mr. Elchaim; defendants repudiated that
16 agreement, that agreed upon schedule and insisted upon
17 changing some dates. We said that June 22nd was not
18 available for Mr. Elchaim, but that the June 24 was and that
19 we were willing to switch the deposition for David Levy
which was then scheduled for June -- July 22.

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21 Defendants did not say that Mr. Levy was
22 unavailable that day, but they apparently just wanted the
23 order of the depositions that they wanted. And so they
24 refused to accept Mr. Elchaim's (inaudible) he was
25 available, and we don't think that that gamesmanship should
be rewarded.

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2 MR. BALBER: Your Honor, two issues, let's just be
3 clear of the number, we have taken eight depositions, not
4 nine, not ten, I believe we're entitled to two more. Those,
5 we respectfully are requesting Mr. Elchaim and a 30(b)(6)
6 witness. As to scheduling, we had this conversation weeks
7 ago, Your Honor, where Fidelity unilaterally identified the
8 date and then (indiscernible) couldn't do it on that date,
9 they claim we're in breach of an agreement.

10

So they're (indiscernible) two depositions, Your
Honor, I don't know if it's worth rehashing the scheduling
issues, it's giving me a headache. So, you know, we can
agree to disagree as to whether we had picked dates or not
picked dates for those two depositions, but we would like
them to be scheduled in the next couple of weeks.

16

THE COURT: Do you want me to pick dates, is that
what you're asking?

18

MR. BALBER: No, Your Honor, I'd like Your Honor
to -- I mean I've never, quite frankly, been involved in a
litigation where there is so much absurd time spent by the
parties arguing and debating over things that sophisticated
counsel in sophisticated cases should be able to agree upon.

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THE COURT: I agree with you, wholeheartedly,
which is why I indicated that the volume of material that
has come to me is excessive and unnecessary.

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3 MR. BALBER: And I would add preposterous, Your
4 Honor. On this note, we would like the depositions ordered,
5 and I would hope, hope, hope, that Mr. Moore and I can agree
6 on dates for those two depositions without getting the Court
involved.

7

8 THE COURT: All right, so there will be an
examination of Mr. Elchaim and a 30(b)(6) witness.

9

MR. BALBER: Thank you, Your Honor.

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11 THE COURT: Fidelity sent a letter dated July 23,
12 2010, regarding the Tamarind (phonetic) subpoena. The
defendants must comply with the subpoena.

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14 MR. BALBER: Your Honor, we have, again, I just
15 want to make sure we're on the same page, we've been served
16 objections. Rather than have a meet and confer conversation
17 about what the objections are, we got the letter to Your
18 Honor, if you ordered that we produce all documents without
19 regard to objections or that we discuss what the appropriate
scope should be or something else.

20

21 MR. MOORE: Your Honor, this is Mr. Moore, the
22 defendants made their motion to quash, they did not raise
23 the issue of documents which were sought for the deposition,
24 they did not seek to meet and confer before moving to quash.
25 They (inaudible) to producing even a single scrap of paper
in response to the subpoena, that is not a good faith

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2 response and they should be ordered to produce all the
3 documents responsive to our request.

4 MR. BALBER: Your Honor, we received it, we issued
5 the subpoena for a deposition, we received a subpoena for
6 documents. As to deposition, we moved to quash. Our motion
7 was denied. We offered to produce Mr. Levy in response to
8 that subpoena.

9 With regard to the subpoena for documents, we
10 served timely objections and responses. All I'm asking is
11 to have a conversation with Mr. Moore of that scope. I'm not
12 sure why it's inappropriate for a third party to serve
13 objections and responses timely to a document subpoena.

14 THE COURT: Well I'm not going to bar you from
15 having a conversation with your adversary. I've tried
16 throughout all of these conferences to encourage the parties
17 to have conversations and resolve disputes so that you would
18 not have to come to me. Now, as I understand it, the time
19 for complying is the 30th of July for the deposition, isn't
20 that correct?

21 MR. MOORE: Your Honor, we were offered that date,
22 but that was without any documents. So I think that we would
23 want to get the documents before we depose the witness.

24 MR. SOBEL: Your Honor, this is Jonathan Sobel, I
25 apologize for having two voices for Fidelity. The concern